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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,537	12/22/2000	Robert A. Migliorini	10212	2084

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EXAMINER

KRUER, KEVIN R

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 10/04/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/747,537

Applicant(s)

MIGLIORINI ET AL.

Examiner

Kevin R Kruer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 19-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-10, and 13-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Dries et al. (US 5,529,843). Dries teaches a composite film having a base layer that is predominately polypropylene, and at least one top layer (abstract). The polypropylene is preferably isotactic polypropylene (col 3, lines 2+). In addition to the isotactic polypropylene, the base layer may further comprise (a) 1-50wt% of copolymers and/or terpolymers and/or other polyolefins, such as polyethylene, HDPE, LDPE, LLDPE (col 3, lines 19+), and (b) 1-30wt% of a low molecular weight resin (col 6, lines 50+). The low molecular weight resin can be selected from the group consisting of petroleum resins, styrene resins, cyclopentadiene resins, and terpene resins. Specifically, the hydrocarbon can be a hydrogenated cyclopentadiene (which reads on applicant's "saturated alicyclic" of claim 7). The top layer comprises an olefinic homopolymer (col 4, lines 36+) and may comprise antiblocking agents (col 6, lines 19+). The composite film is biaxially oriented at a longitudinal stretching ratio of 4:1 to 7:1 and a traverse ratio of 6:1 to 11:1 (col 2, line 30). The total thickness of the composite film can vary from 10-120 microns, wherein the base layer comprises at least 90% of the thickness of the film (see Example 1).

The films are coextruded, biaxially oriented, and then flame treated on the surface of the layer intended to be corona treated (col 8, lines 30+). The film is then wound (col 9, line 1). With respect to claim 22, the examiner takes the position that the five-layer embodiment of Dries reads on said claim.

With respect to claim 5, the examiner takes the position that "recycled" is a method limitation. Furthermore, there is no difference between recycled and virgin isotactic polypropylene. Specifically, the materials are considered to be identical because each material comprises the same monomeric units with the same stereoregularity. The courts have held that a method of making a product does not patentably distinguish said product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the current application, no such showing has been made. Thus, the examiner maintains the position that the product taught in Dries is identical to the claimed product of claim 5 for the reasons stated above.

2. Claims 1-7, 10, 11, 13-15, 17-20, and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Peiffer et al (US 5,443,895). Peiffer teaches a base layer containing about 5-40wt% by weight of a propylene homopolymers, 0-30wt% by weight of a hydrogenated hydrocarbon, and 30-95wt% of a random ethylene-propylene copolymer (abstract). The propylene homopolymers is preferably an isotactic polypropylene (col 4, line 3+). The hydrogenated hydrocarbon is selected from the group consisting of styrene, indene, and hydrogenated cyclopentadiene (col 4, lines 11+). A top layer comprising ethylene-propylene copolymers, propylene/butene

copolymers, or ethylene/propylene/butene terpolymer (col 4, lines 29+) is arranged on either side of the base layer (abstract). The top lay may further comprise antiblocking agents (col 5, line 2). The film has a thickness of 20-60 microns, wherein the top layers have a thickness of 0.5 to 1.5 microns each (col 5, lines 43+). The film may be biaxially oriented stretched (col 6, lines 57+), with a stretch ratio of 9 to 12 in the traverse direction (col 7, line 13).

The films are made by coextruding the melts corresponding to the individual layers of the film through a flat-film die, biaxially stretching, heat-setting the biaxially stretched film, optionally corona-treating or flame treating and subsequently winding the film up (col 11, lines 33+). With regards to claim 22, the limitations are met when the film comprises 5 layers (col 10, line 3).

With respect to claim 5, the examiner takes the position that "recycled" is a method limitation. Furthermore, there is no difference between recycled and virgin isotactic polypropylene. Specifically, the materials are considered to be identical because each material comprises the same monomeric units with the same stereoregularity. The courts have held that a method of making a product does not patentably distinguish said product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the current application, no such showing has been made. Thus, the examiner maintains the position that the product taught in Peiffer is identical to the claimed product of claim 5 for the reasons stated above.

***Claim R j ctions - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peet (US 6,270,912B1) in view of Blemberg (US 5,108,844). Peet teaches an oriented multi-layered film comprised of a core layer of isotactic polypropylene, a first additional layer on a side of the core layer, and a second additional layer on a side of the core layer that is opposite to the side having the first additional layer (abstract). In the preferred embodiment, the core also includes 3-15wt% a polymerized alicyclic hydrocarbon such as polyterpene (col 5, line 46+). The additional layers may comprise ethylene-propylene random copolymers (col 3, line 57), ethylene-propylene-butene terpolymers (col 4, line 4), propylene-butylenes copolymers (col 3, line 58), LDPE (col 4, line 27), or polypropylene (col 3, line 50). The additional layers may further comprise appropriate additives such as antiblocking agents (col 5, lines 1+). The film usually has a thickness of 0.4-2.5 mil (which is equivalent to 10-64 microns), wherein the core comprises 40-95% of the total thickness, and the outer skin layers comprise 1-15% of the total thickness (col 6, lines 51+). The film is oriented from about 3.5 to about 6.5 times in the machine direction and from about 5 to 14 times in the traverse direction (col 7, lines 3+). The film can be flame or corona treated (claim 6). Furthermore, the core can have more than one layer coextruded on either side (col 4, line 48+).

Peet does not teach that the core should comprise a polymeric modifier. However, Blemberg teaches blends having improved adhesion to each other when coextruded into multilayer films resulting from adjusting the components of the blend of the layers (abstract). Specifically, Blemberg teaches that if a first layer comprises film forming polymer or copolymer Y, and a second film comprises polymer or copolymer X, these layers can have improved adhesion to one another when formed into a multilayered film if the first layer comprises 10-30wt% X, and the second layer comprises 10-30%Y (col 2, lines 12+). Thus, it would have been obvious to one of ordinary skill in the art to blend 10-30wt% of the polymer comprising the outer skin layers into the core layer in order to improve adhesion of the core to the skin layers. Peet teaches the skin layers may comprise polymers such as ethylene propylene random copolymers (col 3, line 57), ethylene-propylene-butene terpolymers (col 4, line 4), propylene butylenes copolymers (col 3, line 58), LDPE (col 4, line 27), or polypropylene (col 3, line 50).

With respect to claim 5, the examiner takes the position that "recycled" is a method limitation. Furthermore, there is no difference between recycled and virgin isotactic polypropylene. Specifically, the materials are considered to be identical because each material comprises the same monomeric units with the same stereoregularity. The courts have held that a method of making a product does not patentably distinguish said product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the current application, no such showing has been made. Thus, the

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examiner maintains the position that the product taught in Peet is identical to the claimed product of claim 5 for the reasons stated above.

4. Claims 1-7, 13, and 16-22, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nanbu (US 4,414,261) in view of Blemberg (US 5,108,844). Nanbu teaches a tape comprising an intermediate layer of polypropylene containing 25-35wt% petroleum resin, and outer layers made of a crystalline polypropylene (abstract). The preferred intermediate layer comprises crystalline polymer is isotactic polypropylene (col 1, line 63) and fully hydrogenated alicyclic petroleum resin (col 2, line 2). The sheet is oriented such that the orientation in the longitudinal direction is greater than the orientation in the transverse direction (col 2, lines 58+). It is preferred that the sheet is stretched with a traverse stretching rate of at least 6 and the product of the longitudinal and traverse stretching rates being within a range of at least 42 and less than 72. The intermediate layer has a thickness of 60-90% of the total thickness of the base sheet (abstract), and the total thickness of the film is 30-40microns (col 3, line 17). An adhesive may be applied to the laminate. Furthermore, the film can be coextruded (col 2, line 30) and subjected to electron beam irradiation prior to the application of the adhesive (col 3, lines 33+). Furthermore, the laminate may be wound (col 2, line 14).

Nanbu does not teach that the core should comprise a polymeric modifier.

However, Blemberg teaches blends having improved adhesion to each other when coextruded into multilayer films resulting from adjusting the components of the blend of the layers (abstract). Specifically, Blemberg teaches that if a first layer comprises film forming polymer or copolymer Y, and a second film comprises polymer or copolymer X,



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these layers can have improved adhesion to one another when formed into a multilayered film if the first layer comprises 10-30wt% X, and the second layer comprises 10-30%Y (col 2, lines 12+). Thus, it would have been obvious to one of ordinary skill in the art to blend 10-30wt% polypropylene into the intermediate layer in order to improve adhesion of the core to the skin layers.

With respect to claim 5, the examiner takes the position that "recycled" is a method limitation. Furthermore, there is no difference between recycled and virgin isotactic polypropylene. Specifically, the materials are considered to be identical because each material comprises the same monomeric units with the same stereoregularity. The courts have held that a method of making a product does not patentably distinguish said product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the current application, no such showing has been made. Thus, the examiner maintains the position that the product taught in Nanbu is identical to the claimed product of claim 5 for the reasons stated above.

5. Claims 1-11 and 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bossaert et al. (US 4,921,749) in view of Blemberg et al (US 5,108,844). Bossaert teaches a film comprising a base layer of 70-97wt% of a polyolefin, and 3-30wt% of a low molecular weight resin. A surface layer comprising a random copolymer is applied to at least one surface of the base layer (abstract). The preferred polyolefin of the base layer is isotactic polypropylene (col 1, lines 49+). The low molecular weight resin may comprise hydrogenated petroleum resin (col 2, lines

4+). The surface layers comprise an ethylene-propylene copolymer comprising 1-20wt% ethylene. The film preferably has a thickness of 2-150 microns (col 3, lines 21+) wherein the outer layers each have a thickness of 0.05-2.5 microns (col 3, line 25). The film is stretched 5 times in the machine direction and 9 times in the traverse direction (see examples).

Bossaert does not teach that the core should comprise a polymeric modifier. However, Blemberg teaches blends having improved adhesion to each other when coextruded into multilayer films resulting from adjusting the components of the blend of the layers (abstract). Specifically, Blemberg teaches that if a first layer comprises film forming polymer or copolymer Y, and a second film comprises polymer or copolymer X, these layers can have improved adhesion to one another when formed into a multilayered film if the first layer comprises 10-30wt% X, and the second layer comprises 10-30%Y (col 2, lines 12+). Thus, it would have been obvious to one of ordinary skill in the art to blend 10-30wt% ethylene-propylene copolymer into the core layer in order to improve adhesion of the core to the skin layers.

With respect to claim 5, the examiner takes the position that "recycled" is a method limitation. Furthermore, there is no difference between recycled and virgin isotactic polypropylene. Specifically, the materials are considered to be identical because each material comprises the same monomeric units with the same stereoregularity. The courts have held that a method of making a product does not patentably distinguish said product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different

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product. In the current application, no such showing has been made. Thus, the examiner maintains the position that the product taught in Bossaert is identical to the claimed product of claim 5 for the reasons stated above.

6. Claims 1-11, 13-21, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuhmann et al (US 5,433,983) in view of Blemberg et al (US 5,108,844). Schuhmann teaches a sealable film having a base layer comprising polypropylene and 5-30wt% (col 3, line 1) of a hydrocarbon resin and at least one top layer comprising (a) an ethylene-propylene copolymer having an ethylene content of not more than 10wt%, (b) a propylene/butene copolymer, (c) a propylene/ethylene/alpha-olefin terpolymer, (d) a blend of two or more of (a), (b), or (c) wherein at least one top layer contains an anti-blocking agent (abstract). The polypropylene is preferably isotactic propylene (col 2, line 48). The low molecular weight resin may comprise hydrogenated hydrocarbon resin, petroleum resin, styrene resin, cyclopentadiene resin and terpene resins (col 3, lines 23+). The film is stretched at a ratio of higher than 1:7.5 in the transverse direction and preferably in the range of 8:1 to 11:1 (col 5, line 15) and about 1:4 to 1:6 in the longitudinal direction (col 5, lines 5+). The film may be 20 microns thick (see example 1) wherein the core layer comprises over 90% of the film's total thickness (see example 1).

The film is coextruded, oriented (col1, lines 61+), and then subjected to conventional treatments, such as corona and flame treatment, prior to winding (col 5, lines 5+)

Schuhmann does not teach that the core should comprise a polymeric modifier. However, Blemberg teaches blends having improved adhesion to each other when coextruded into multilayer films resulting from adjusting the components of the blend of the layers (abstract). Specifically, Blemberg teaches that if a first layer comprises film forming polymer or copolymer Y, and a second film comprises polymer or copolymer X, these layers can have improved adhesion to one another when formed into a multilayered film if the first layer comprises 10-30wt% X, and the second layer comprises 10-30%Y (col 2, lines 12+). Thus, it would have been obvious to one of ordinary skill in the art to blend 10-30wt% of the composition comprising said top to the base layer in order to improve adhesion of the core to the skin layers. Schuhmann teaches the top layer may comprise a) an ethylene-propylene copolymer having an ethylene content of not more than 10wt%, (b) a propylene/butene copolymer, (c) a propylene/ethylene/alpha-olefin terpolymer, (d) a blend of two or more of (a), (b), or (c) wherein at least one top layer contains an anti-blocking agent (abstract).

With respect to claim 5, the examiner takes the position that "recycled" is a method limitation. Furthermore, there is no difference between recycled and virgin isotactic polypropylene. Specifically, the materials are considered to be identical because each material comprises the same monomeric units with the same stereoregularity. The courts have held that a method of making a product does not patentably distinguish said product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the current application, no such showing has been made. Thus, the

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examiner maintains the position that the product taught in Schuhmann is identical to the claimed product of claim 5 for the reasons stated above.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 703-305-0025. The examiner can normally be reached on Monday-Friday from 7:00a.m. to 4:00p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (703) 308-2367. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*K-RK*

krk

*Paul Thibodeau*

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